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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.1.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A) No.73 of 2002

Shri A.M.Rathnam,
Sri Surya Movies,
1, Velavan Street,
Valasaravakkam, Chennai 87.
.. Appellant

vs.

The Deputy Commissioner of Income Tax
City Circle, V (Inv.)(2), Madras. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 13.2.2002 in ITA No.2017/Mds/2000, for the assessment year 1997-98 against the order of the Commissioner of Income Tax (A) X, 121, Mahathma Gandhi Salai, Chennai-34 dated 1.8.2000 nand ITA .No. 162/2000-2001 against the Order of the Deputy Commissioner of Income tax, City Circle V (Inv) (2) Chennai-6 dated 31.3.2000 and made in PAN/GIR.No. 2706-R.

For appellant : Mr.C.V.Rajan
For respondent : Mrs.Pushya Sitaraman, Sr.SC for IT.

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The assessee has preferred the above tax case appeal against the order of the Income-tax Appellate Tribunal dated 13.2.2002 in ITA No.2017/Mds/2000, for the assessment year 1997-98 raising the following substantial questions of law for consideration:

1. Whether the Appellate Tribunal is right in holding that deduction claim made by the appellant in respect of expenditure and acquisition and distribution rights of feature fils only come under Rule 9B(3)(c) of the Income-tax Rules as against the claim made by the appellant under Rule 9B(2)(a) of the Income-tax Rules?

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2. Whether the Income-tax Appellate Tribunal is right in rejecting the claim of the cost of acquisition of the film, namely, 'Iruvar' under 9B(2)(a) when all the documentary evidence show that it was sold fully?

3. Whether the Income-tax Appellate Tribunal is right in disregarding the letters filed by the appellant lessor as well as the lessee to the effect that films rights were sold?

4. Whether the Appellate Tribunal is right in holding that the lease deed does not provide clear intention does not mean that rights are not fully sold?

5. Whether the Appellate Tribunal is right in holding that in respect of the films rights of Malayalam films the claim of cost of acquisition would come only under 9B(4) of Income-tax Rules as against the claim of the appellant that it will come under 9A (6) of the Income-tax Rules when the appellant is the producer?

6. Whether the valuation of closing stock by the Revenue is correct in law when the appellant has option to value the stock at market or cost whichever is lower?

7. Whether the Income-tax Appellate Tribunal was right in holding that valuing the acquisition stock of film at Rs.33,46,480/- when the film has flopped and has no market value?

2. The facts, in brief, are as follows:

2.1. The relevant assessment year with which we are concerned is 1997-98. The assessee filed his return of income on 31.10.1997 admitting an income of Rs.1,05,87,690/-. The assessee filed a revised return on 8.12.1997 declaring total income of Rs.1,07,73,210/-. The assessment was taken up for scrutiny and notices under section 143(2) and 142(1) were issued to the assessee calling for certain details.

2.2. In response to the same, the assessee produced the agreement dated 11.1.1997 under which the assessee acquired the distribution rights of the film, 'Iruvar' in respect of Madurai and Ramnad Districts from M/s.Madras Talkies for a period of five years. The cost of purchase mentioned in the agreement was Rs.50,50,000/- which was paid by the assessee in three instalments. The film was released by the assessee for public exhibition in the theaters, viz., Cinipriya, Solaimalai and Amirutham at Madurai, Sami at Palani, National at Theni, Central at Virudhunagar, Jaya Anand at Rajapalayam, Naga at Dindigul, Yuvaraj at Kambam and Sivam at Karaikudi.

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2.3. Thereafter, the assessee sold the distribution rights of the said film to M/s.S.M.Movies, Madurai by agreement dated 24.3.1997 for a total consideration of Rs.1,00,000/-. The relevant portion of the agreement reads as follows:

> "Whereas the lessees are willing to distribute the said picture on outright lease basis for the area of Madurai & Ramnad Districts (except first released following theatres: Cinipriya, Solaimalai & Amritham theatres, Madurai, Sami theatre – Palani, National theatre – Theni, Central theatre – Virudhunagar, Jeya Anand – Rajapalayam, Naga theatre – Dindigul, Yuvaraj theatre – Cumbam & Sivam theatre – Karaikudi) for a period of 5 years and consideration of outright specified hereunder.
> xxx
> xxx
> And whereas the lessors (right holders) have hereby granted and assigned unto the lessees the outright leasehold of the said picture for distribution, exhibition and exploitation in the area of Madurai & Ramnad Dists., constituted today as popularly known in the film trade.
> xxx
> xxx
> 5. The lessees shall not exhibit the picture in the outside area except in the area covered herein during the lease period and likewise the lessors also hereby assure to the lessees that they will not directly or indirectly exhibit the picture in the area covered herein during the lease period.

2.4. It is seen from the schedule annexed to the Profit and Loss account for the year ending on 31.3.1997 that the film realised by way of commercial exhibition a sum of Rs.5,91,020/-, apart from the sale of lease rights of Rs.1 lakh under agreement dated 24.3.1997 as against the total cost of acquisition of lease rights of Rs.50,50,000/- paid by the assessee by virtue of agreement dated 11.1.1997 between the assessee and M/s.Madras Talkies, the producers of the film. The assessee claimed the entire cost of acquisition of lease rights of film as deduction under Rule 9B(2)(a) of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules'), which reads as under:

> "Deduction in respect of expenditure on acquisition of distribution rights of feature films:
>
> 9B. (1) xxx
>
> (2) Where a feature film is acquired by the film distributor in any previous year and in such previous year -
>
> (a) the film distributor sells all rights of exhibition of the

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film, the entire cost of acquisition of the film shall be allowed as a deduction in computing the profits and gains of such previous year"

2.5. The assessing officer rejected the claim of deduction by the assessee under Rule 9B(2)(a) of the Rules on the ground that Rule 9B(2)(a) of the Rules is not applicable, as the assessee released the film for exhibition in certain theatres and sold the rights in respect of other areas to M/s.S.M.Movies as per agreement dated 24.3.1997, however, the assessing officer granted deduction under Rule 9B(3)(c) of the Rules which reads as follows:

"Deduction in respect of expenditure on acquisition of distribution rights of feature films:

9B. (1) xxx
(2) xxx

(3) Where a feature film is acquired by the film distributor in any previous year and in such previous year the film distributor –

(a) xxx
(b)xxx
(c) himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas,

and the film is not released for exhibition on a commercial basis at least ninety days before the end of such previous year, the cost of acquisition of the film in so far as it does not exceed the amount realised by the film distributor by exhibiting the film on a commercial basis or the amount for which the rights of exhibition have been sold or, as the case may be, the aggregate of the amounts realised by the film distributor by exhibiting the film and by the sale of the rights of exhibition, shall be allowed as a deduction in computing the profits and gains of such previous year; and the balance, if any, shall be carried forward to the next following previous year and allowed as a deduction in that year."

2.6. That apart, the assessee also sold the rights in respect of two old Malayalam films, viz., Aanyan Baba Chettan Baba and Melperambil Inveedu. According to the assessee, the rights of the said two Malayalam films were purchased by the assessee for Rs.12,89,500/- about four or five years back and since then, there was no realisation out of the films as neither the assessee released the films for commercial exhibition on his own, nor could he sell the rights to other parties. The cost of rights incurred by the assessee was then carried over from year to year and only in the current accounting year, viz., on 31.3.1997, the assessee could sell the rights for a total consideration of Rs.1,50,000/- as against the

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cost incurred by him, viz., Rs.12,89,500/-. Hence, the assessee claimed deduction of the entire cost of acquisition of Rs.12,89,500/- under Rule 9A(6) of the Rules which runs as follows:

"9A. Deduction in respect of expenditure on production of feature films:

(1) to (5) xxx

(6)Where the Assessing Officer is of opinion that -

(a) the rights of exhibition of the feature film have been transferred by the film producer by a mode not covered by the provisions of this rule; or

(b) having regard to the facts and circumstances of any case, it is not practicable to apply the provisions of this rule to such case,

deduction in respect of the cost of production of the film may be allowed by the Assessing Officer in such other manner as he may deem suitable."

2.7. The assessing officer rejected the claim of the assessee in respect of deduction of cost of acquisition of the said two Malayalam movies under Rule 9A(6) and held that the assessee would be entitled to deduction of cost of acquisition as per Rule 9B(4) of the Rules which reads thus:

"Deduction in respect of expenditure on acquisition of distribution rights of feature films:

9B. (1) xxx
(2) xxx
(3) xxx
(4) Where during the previous year in which a feature film is acquired by the film distributor, he does not himself exhibit the film on a commercial basis or does not sell the rights of exhibition of the film, no deduction shall be allowed in respect of the cost of acquisition of the film in computing the profits and gains of such previous year; and the entire cost of acquisition shall be carried forward to the next following previous year and allowed as a deduction in that year."

2.8. On appeal, the Commissioner of Income-tax (Appeals) confirmed the view of the assessing officer.

2.9. On further appeal, the Appellate Tribunal, by order dated 13.2.2002, confirmed the view taken by the Commissioner of Income-tax (Appeals), dated 1.8.2000. The relevant portion of the order of Commissioner of Income-tax (Appeals) is as under:-

" After going through the facts, I find that the appellant

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> has to sold all rights of exhibition of the film, as contemplated in Rule 9B(2)(a). The right of exhibition in certain theatres were still retained. It will be more logical to allow the deduction as per Rule 9B(3)(c) and split the deduction in this assessment year and next assessment year. Therefore the procedure followed by the assessing officer is upheld".....
>
> "According to the assessing officer under the provisions of Sub Rule 4 of Rule 9B the entire cost of acquisition of Rs.12,89,500/- would be allowable as deduction in the previous year next following the year in which they were acquired by the appellant and the same can not be allowed as deduction in the current year."

2.10. Aggrieved by the order of the Appellate Tribunal, the assessee has come forward with this appeal raising the questions of law referred to above.

> 3.1. Regarding the 1st question, viz.,
>
> "Whether the Appellate Tribunal is right in holding that deduction claim made by the appellant in respect of expenditure and acquisition and distribution rights of feature films only come under Rule 9B(3)(c) of the Income-tax Rules as against the claim made by the appellant under Rule 9B(2)(a) of the Income-tax Rules"

Rule 9B referred to above provides for deduction in respect of expenditure on acquisition of distribution rights of feature films. As per the explanation to Rule 9B(1), the expression 'cost of acquisition' in relation to a feature film means the amount paid by the film distributor to the film producer or to another distributor under an agreement entered into by the film distributor with such film producer or such other distributor as the case may be for acquiring the rights of exhibition and, where the rights of exhibition have been acquired on a minimum guarantee basis, the minimum amount guaranteed, not being -

> (i) the amount of expenditure incurred by the film distributor for the preparation of the positive prints of the film; and
>
> (ii) the expenditure incurred by him in connection with the advertisement of the film.

3.2. Rule 9B(2) which we have already extracted provides for deduction of the entire cost of acquisition of the film when a feature film is acquired by the film distributor in any previous year and in such previous year, he sells all rights of exhibition of the film. Accordingly, under Rule 9B(2), while computing the profits and gains, the film distributor is entitled to the deduction of entire cost of acquisition of feature film which he acquired in any previous year, if the film distributor sells all the rights of exhibition in such previous year.

3.3. However, Rule 9B(3)(c) provides that where the film distributor acquires a feature film in any previous year and in such previous year,

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if he himself exhibits the film on a commercial basis in certain areas and sells the rights of exhibition of the film in respect of all or some of the remaining areas, and the film is not released for exhibition on a commercial basis at least ninety days before the end of such previous year, the cost of acquisition of the film in so far as it does not exceed the amount realised by the film distributor by exhibiting the film on a commercial basis or the amount for which the rights of exhibition have been sold or, as the case may be, the aggregate of the amounts realised by the film distributor by exhibiting the film and by the sale of the rights of exhibition, shall be allowed as a deduction in computing the profits and gains of such previous year; and the balance, if any, shall be carried forward to the next following previous year and allowed as a deduction in that year.

3.4. In the instant case, it is not in dispute that the assessee purchased the distribution rights of the film, 'Iruvar' from M/s.Madras Talkies by agreement dated 11.1.1997 for a sum of Rs.50,50,000/- and as evident from the agreement dated 24.3.1997 between the assessee and M/s.S.M.Movies, the assessee exhibited the film, Iruvar in the theaters, viz., Cinipriya, Solaimalai and Amirutham at Madurai, Sami at Palani, National at Theni, Central at Virudhunagar, Jaya Anand at Rajapalayam, Naga at Dindigul, Yuvaraj at Kambam and Sivam at Karaikudi and then, sold the distribution rights of the film, Iruvar to M/s.S.M.Movies in respect of Madurai and Ramnad areas except the first released theatres, which is clear from the agreement dated 24.3.1997 as extracted above.

3.5. Of course, an attempt was made by Mr.C.V.Rajan, learned counsel for the assessee that the term, "certain areas" found in Rule 9B(3)(c) will not mean theatres as it should be understood to mean the entire area. But, we are unable to appreciate the said contention, because the plain reading of Rule 9B(3)(c) would make it clear that even if the assessee retains one theatre for the release of the movie by himself, and sells the remaining area, Rule 9B(3)(c) will be attracted. Hence, the Tribunal is right in upholding the view of the authorities that the Rule 9B(3)(c) of the Rules would be applicable to the assessee. Accordingly, the question No.1 is answered against the assessee. Consequently, question Nos.2 to 4 are also answered against the assessee.

4. With regard to the 5th question, viz.,

> "whether the Appellate Tribunal is right in holding that in respect of the films rights of Malayalam films the claim of cost of acquisition would come only under 9B(4) of Income-tax Rules as against the claim of the appellant that it will come under 9A (6) of the Income-tax Rules when the appellant is the producer"

we are of the view that the claim of the assessee that he is entitled to deduction under Rule 9A(6) is not acceptable as Rule 9A deals with deduction in respect of expenditure on production of feature film. On the other hand, Rule 9B alone deals with the deduction in respect of distributors. Concededly, the assessee is not a producer, but only a

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distributor. Therefore, the assessee is not entitled to deduction under Rule 9A(6). We therefore hold that the assessing officer has rightly rejected the claim of the assessee and allowed the deduction under Rule 9B (4) of the Rules. Hence, the 5th question is answered against the assessee.

5. With regard to the 7th question, viz.,

> "whether the Income-tax Appellate Tribunal was right in holding that valuing the acquisition stock of film at Rs.33,46,480/- when the film has flopped and has no market value"

we find that no such an issue was raised before the Appellate Tribunal. It is settled law that a point not raised before or considered by Tribunal cannot be considered by the High Court [vide: C.I.T. vs. Vellore Electric Corporation Ltd. (235 ITR 289)]. However, the assessee is at liberty to agitate the said issue in the manner known to law, if he is so advised. The 7th question is also answered against the assessee. The 6th question, which is consequential, is also answered against the assessee.

In fine, all the questions are answered against the assessee and in favour of the Revenue. The appeal fails and the same is dismissed. No costs.

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Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
III Floor Rajaji Bhavan, Besant Nagar,
Madras.
2.The Commissioner of Income-
Tax (Appeals-X),121, Mahathma Gandhi Salai, Chennai-34.
Chennai.
3.The Deputy Commissioner
of Income-tax, City Circle V(Inv)(2),
Chennai.
+ One cc to Mr. r. Vijayaraghavan Advocate sR 844
+ One cc to Mrs Pusya Sitaraman, Advocate SR 737
NG (co)
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